



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF DERRY, NEW HAMPSHIRE

Petitioner

v.

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 1801,
DERRY ADMINISTRATIVE SUPPORT STAFF

Respondent

CASE NO. A-0483:3
DECISION NO. 85-83

APPEARANCES

Representing the Town of Derry, New Hampshire

Gary W. Wulf

Representing the American Federation of State, County and Municipal Employees,
Local 1801, Derry Administrative Support Staff

James C. Anderson

Also in Attendance

Ann Marie Foote, Derry Support Staff
Gloria E. Chesson, Derry Support Staff

BACKGROUND

On March 18, 1985, the Town of Derry (hereinafter referred to as Town) filed a bargaining unit modification petition with the Public Employee Labor Relations Board (hereinafter referred to as the Board) alleging material changes in duties and responsibilities for two positions within AFSCME Local 1801, Derry Administrative Support Staff unit (hereinafter referred to as the Union) which should disqualify those two positions from inclusion in the bargaining unit.

The parties met during May 1985 to resolve the issue collectively but were unable to reach an agreement.

On October 10, 1985, a hearing was held by the Board with both parties represented. At the hearing, the Town amended its petition by deleting the request to remove the position of Assistant to the Finance Director from the unit resulting in a petition only to remove the position of Assistant Code Enforcement Officer from the unit. Testimony and

exhibits were received by the Board regarding the removal of this position.

The Board finds, based on the evidence, testimony and records available that the position of Assistant Code Enforcement Officer did not exist when the unit was certified by the Board in 1983. In late 1983 or early 1984 a position of Secretary within the bargaining unit was upgraded to the position of Assistant Code Enforcement Officer with additional duties.

The Union and the Town entered into their first collective bargaining agreement in 1984 and the recognition clause included the position of Assistant Code Enforcement Officer. In March of 1984 the Town sought advice from the Board on how to proceed with requests from two employees, Assistant to the Finance Director and Assistant Code Enforcement Officer to have their positions removed from the bargaining unit. An additional inquiry for that advice expressing concern over upcoming negotiations was filed by the Town in October 1984. Negotiations concluded for the 1985 contract in late February 1985, again recognizing the two positions within the bargaining unit. The Town then filed their petition for bargaining unit modification in March 1985.

The Board finds the petition timely and appropriate in that the Board has the responsibility to certify all bargaining units and modifications regardless of the parties agreement or disagreement.

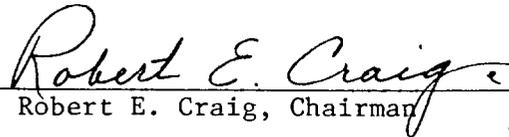
In this instance, the Board certifies the inclusion of Assistant to the Finance Director within the bargaining unit based on the parties agreement.

The Board finds that the position of Assistant Code Enforcement Officer does not qualify for exclusion under supervisory or professional characteristics. The upgrading of the secretarial position did require the position to be the lead office staff position. However, the new position does not include a significant exercise of discretion regarding labor management relations. The position does not have the right to hire, fire, promote, demote or formulate budgets on policy. The position's discretion lies in the area of work task assignments and that does not qualify for exclusion from the bargaining unit.

The position likewise does not qualify for exclusion from the bargaining unit based on a professional status. In the event of a worksite which requires some employees to possess specific education credentials either from advanced higher education or highly specialized training and other employees to possess skills necessary for a specific work assignment, the Board would require separate representation election votes from each category of employees. In this instance, although the job requirements have increased, they still fall within possession of skills and the requirements are not dissimilar from the skills or training requirements of the other positions in the bargaining unit. The Board does not find the requirements for the position of Assistant Code Enforcement Officer to be within the meaning of professional employee.

In the instant case, arising from employees' requests to have their positions removed from the bargaining unit, the Board would remind those employees that when a position is included in a bargaining unit, the Union is obligated to bargain in good faith with the employer regarding the terms and conditions of employment associated with that position. However, the employee filling that position is not obligated to be a member of the Union.

Wherefore, the Board does order that the unit certification for AFSCME Local 1801, Derry Administrative Support Staff unit is hereby modified to include the positions of Assistant Code Enforcement Officer and Assistant to the Finance Director.


Robert E. Craig, Chairman

Signed this 24th day of October, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Richard Roulx and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.